v. *Melville*, 13 N. S. W. L. R. 132. See *Lucas* v. *Mason*, L. R. 10 Exch. 251, 254. It is not certain that the assembly could compel the attendance of a member to be reprimanded rather than to aid in its legislative functions. But conceding this power in the assembly, it is not such a needful incident to the office of the speaker that it can fairly be said to be delegated to him in the absence of an express authorization. The result reached by the court in the principal case is thus, it seems, correct.

LICENSES — LICENSOR'S LIABILITY TO LICENSEE — AFFIRMATIVE NEGLIGENT ACTS. — The plaintiff, in common with the public, had for many years used a road across the defendant's premises, on which a quarry had gradually been enlarged in the direction of the roadway. The excavation was then rapidly advanced toward and across the road without the plaintiff's knowledge. The plaintiff, while walking on the road at night, fell into the quarry and was injured. *Held*, that he cannot recover. *Fox* v. *Warner-Quinlan Asphalt Co.*, 204 N. Y. 240, 97 N. E. 497.

Continuous use of a private way by members of the public makes them no more than bare licensees. *Stevens* v. *Nichols*, 155 Mass. 472, 29 N. E. 1150. *Cf. Hounsell* v. *Smyth*, 7 C. B. N. S. 731. *Contra, Hanson* v. *Spokane, etc. Water Co.*, 58 Wash. 6, 107 Pac. 863. The landowner owes to licensees no duty to make the premises safe. *Gautret* v. *Egerton*, L. R. 2 C. P. 371. It has been held that he is liable to them only for wilful injury. *Illinois Central R. Co.* v. *Godfrey*, 71 Ill. 500; *Dixon* v. *Swift*, 98 Me. 207, 56 Atl. 761. Since, however, the presence of licensees is foreseeable, most courts hold that property-owners must refrain from acts likely to injure them. *Corrigan* v. *Union Sugar Refinery*, 98 Mass. 577; *Felton* v. *Aubrey*, 74 Fed. 350. A distinction has been made between directly bringing force to bear against licensees and altering the condition of the premises without taking proper precautions, which has been held a mere omission. *Nicholson* v. *Erie Ry. Co.*, 41 N. Y. 525. See *Byrne* v. *New York, etc. R. Co.*, 104 N. Y. 362, 366, 10 N. E. 539, 540. Alteration, however, is certainly affirmative action, and if calculated to injure licensees, is negligence towards them. *Corby* v. *Hill*, 4 C. B. N. S. 556; *Rooney* v. *Woolworth*, 78 Conn. 167, 61 Atl. 366. The landowner, however, may properly assume that they will foresee the gradual changes likely to be made in the ordinary course of business. *M'Cann* v. *Thilemann*, 36 N. Y. Misc. 145, 72 N. Y. Supp. 1076. Where, however, the alteration, as in the principal case, is made suddenly and without warning, it would seem that the defendant should be liable. *Cf. Carskaddon* v. *Mills*, 5 Ind. App. 22, 31 N. E. 559.

MANDAMUS — PARTIES — RIGHT OF PRIVATE CITIZEN TO COMPEL ISSUANCE OF WARRANT FOR ARREST. — The petitioner, a private individual, sought by *mandamus* proceedings to compel a justice of the peace to issue a warrant for arrest on a criminal charge of baseball playing on Sunday. *Held*, that he is not a proper relator. *Nichelson* v. *State ex rel. Blitch*, 57 So. 194 (Fla.).

By the weight of authority any member of the public may institute proceedings in *mandamus* on a matter of public interest without showing any special interest in himself. *People ex rel. Case* v. *Collins*, 19 Wend. (N. Y.) 56; *State ex rel. Ferry* v. *Williams*, 41 N. J. L. 332. The principal case denies the plaintiff the right on the ground that the matter in question is of interest only to the state as sovereign. There is, doubtless, a distinction between matters of interest to the government as such and those of interest to the public. See *Berube* v. *Wheeler*, 128 Mich. 32, 35, 87 N. W. 50, 51. But it is submitted that the public is interested in this particular matter. The authorities recognize such an interest in a private citizen to force a magistrate to act in his proper district. *State ex rel. Ferguson* v. *Shropshire*, 4 Neb. 411. So also the public is interested in the enforcement of the liquor laws. *State ex rel. Ferry* v. *Williams, supra.*

And indeed the criminal law would seem to be chiefly concerned with wrongs injurious to the public at large. See 1 BISHOP, NEW CRIMINAL LAW, § 32. *Cf.* BOSANQUET, PHILOSOPHICAL THEORY OF THE STATE, 37, 39. When a public officer refuses to perform his function, the citizen has no adequate remedy but *mandamus*. This consideration, however, leads to a modification of the citizen's right in that he must show that the officer does not intend to perform his duty before he may enforce performance by *mandamus*. *In re Whitney*, 3 N. Y. Supp. 838.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — INJURY FROM FALLING LIMB OF DEAD TREE ON STREET. — The plaintiff was injured by a limb falling from a tree standing on a public street. The tree had been in a dangerous condition over a year. *Held*, that the municipal corporation is not liable. *Dyer* v. *City of Danbury*, 81 Atl. 958 (Conn.). See NOTES, p. 646.

MUNICIPAL CORPORATIONS — LIABILITY FOR TORTS — ULTRA VIRES UNDERTAKING. — The plaintiff was injured by a blast from a quarry, operated by the municipal authorities. The city had no power to operate the quarry. *Held*, that the plaintiff cannot recover. *City of Radford* v. *Clark*, 73 S. E. 571 (Va.). See NOTES, p. 648.

PATENTS — EFFECT OF DECREE FOR DEFENDANT IN INFRINGEMENT SUIT. — A patent for certain wheels was declared invalid in a suit in the Seventh Circuit against the Kokomo Company. The patent was held valid in the Second Circuit, and this holding was affirmed by the Supreme Court. Purchasers of wheels from the Kokomo Company are sued for infringement in the second Circuit. *Held*, that they are not protected by the decree in favor of the seller. *Hurd* v. *Seim*, 189 Fed. 591 (Circ. Ct., N. D. N. Y.); *Hurd* v. *Woodward Co.*, 190 Fed. 28 (Circ. Ct., N. D. N. Y.). See NOTES, p. 649.

PATENTS — INFRINGEMENT — LICENSE RESTRICTION THAT USER BUY UNPATENTED SUPPLIES ONLY FROM PATENTEE. — Patented mimeographs were sold with license restrictions that they be used only with supplies of the patentee's production. The defendant sold unpatented ink with the expectation that it would be used on the patented mimeograph. *Held*, that the defendant is guilty of contributory infringement. *Henry* v. *A. B. Dick Co.*, U. S. Sup. Ct., March 11, 1912. See NOTES, p. 641.

QUASI-CONTRACTS — MONEY PAID UNDER DURESS OR COMPULSION OF LAW — RECOVERY OF TAXES COLLECTED UNDER UNCONSTITUTIONAL STATUTE. — A state statute levied an unconstitutional tax upon foreign corporations and provided for heavy monetary penalties and forfeiture of the right to do business upon failure to pay. *Held*, that a corporation paying the tax under protest may recover it. *Atchison, etc. Ry. Co.* v. *O'Connor*, 32 Sup. Ct. 216.

A state statute levied a franchise tax upon foreign corporations authorized to do business in the state and provided for a heavy penalty and forfeiture of the right to do business upon non-payment. The supreme court of the state had held that a previous similar statute applied only to corporations doing intrastate business. *Held*, that a foreign corporation doing interstate business cannot recover the tax paid under protest. *Gaar, Scott & Co.* v. *Shannon*, 32 Sup. Ct. 236.

Institution of suit on an illegal claim is not duress, since the invalidity of the claim may be shown as a defense. See *Town Council* v. *Burnett*, 34 Ala. 400, 404; *Oceanic Steam Navigation Co.* v. *Tappan*, 16 Blatch. (U. S.) 296, 301. But see KEENER, QUASI-CONTRACTS, 434. Nor is a demand for property under a void warrant duress, unless the warrant is *primâ facie* valid, for such a